

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CRISTINA E.,

Claimant,

vs.

FRANK D. LANTERMAN REGIONAL
CENTER,

Service Agency.

OAH No. 2011040822

DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 2, 2011, in Los Angeles.

Claimant was represented by her mother Lorena E. (Mother).¹ Claimant was present at the hearing. Mother was assisted during the hearing by a Spanish-language interpreter.

Marc Baca, Appeals Coordinator, represented the Frank D. Lanterman Regional Center (Service Agency).

The documentary and testimonial evidence described below was received, and argument was heard. The record was closed and the matter was submitted for decision on June 2, 2011.

¹ Claimant and her mother are identified by first name and last initial, or by title, to protect their privacy.

ISSUE

Whether the Service Agency may terminate funding for claimant's monthly bus pass.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-10.

Testimonial: Christine Otero, service coordinator; Enrique Roman, regional manager.

FACTUAL FINDINGS

1. Claimant is a 12-year-old girl who is an eligible consumer of the Service Agency based on her diagnosis of autistic disorder.
2. Claimant lives with her parents and brother. According to her individual program plan (IPP) dated November 11, 2010, claimant is improving in her self-help and daily living skills. She bathes, dresses, brushes her teeth, and makes her bed on her own. She can also make a sandwich or get a snack or drink on her own. Claimant is no longer having tantrums as she used to. Mother reports that claimant sometimes gets angry when she cannot have a preferred item or activity, but she is not aggressive as she was in the past.
3. Claimant is now communicating her wants and needs with three to four word phrases. Her articulation has improved but she still lacks clarity with some words. She tends to be verbal with familiar people and timid around new people. When claimant is asked a question, she may repeat the question or not respond. When claimant does interact with people, she speaks in short and simple sentences but she does not have conversations. Claimant previously attended a social skills program but Mother pulled her out of the group because Mother felt the other children seemed to have more severe disabilities and there was a particular child that made her nervous.
4. Claimant is a seventh grader and attends a special day class at her middle school. She is eligible for special education services and supports on the basis of autism. The school district provides speech therapy and behavior intervention services. Claimant's individualized education program (IEP) dated February 24, 2009, indicates she is eligible to receive transportation from home to school provided by the school district. The family, however, is not using the transportation services offered by the school district. According to claimant's service coordinator, Christine Otero, Mother has expressed that she is uncomfortable using those services because

of her concern that claimant will imitate any inappropriate behavior of other children on the bus, and that the bus driver cannot supervise or monitor if the children hit or engage in other inappropriate behavior. Thus, Mother takes claimant to school on the public bus.

5. Since 2005, the Service Agency has funded a monthly bus pass for claimant as a transportation service, so that claimant will "have access to various therapies, medical appointments, psychiatric appointments, for blood work, and for community social recreational outings." Pursuant to claimant's IPP dated November 11, 2010, and related IPP Amendments, the Service Agency agreed to fund claimant's bus pass until March 31, 2011, "[a]s an exemption to the Frank D. Lanterman Regional Center Service Standards."

6. Claimant's service coordinator, Ms. Otero, has had several discussions with Mother regarding changes to the Lanterman Act pertaining to the way that regional centers purchase services for its clients. Despite the changes to the Lanterman Act, the Service Agency continued to fund claimant's monthly bus pass as an exemption to its service standards, on the basis of financial hardship and to provide claimant's family sufficient time to access generic resources for claimant's transportation. One generic resource that claimant's current and former service coordinators discussed several times with Mother was Access Transportation Services (Access). Mother, however, maintained that she was not interested in pursuing Access services.

7. Access is a transportation service for persons with disabilities. To obtain Access services, an application must be submitted and granted by Access. The Access identification card allows the person and one companion to ride fixed-route buses and Metro rail at no cost. Access also has vans that can be scheduled for transportation at the cost of \$2.25 for 0-19.9 miles or \$3.00 for 20 miles or more. Ms. Otero was informed by Access that claimant would likely be eligible for Access services. The Service Agency has requested Mother to apply for Access services for her daughter but she has chosen not to do so.

8. By letter dated March 29, 2011, the Service Agency notified Mother of its decision to deny her request for continued funding of a monthly bus pass for claimant. On April 12, 2011, Mother filed a fair hearing request to appeal the Service Agency's decision. An informal meeting was held on May 9, 2011, which resulted in the Service Agency upholding the decision to deny the request for continued funding of the bus pass. Mother was notified of the informal decision by letter dated May 16, 2011.

9. The Service Agency contends that Access is a generic resource that is available to meet claimant's transportation needs at a low or nominal cost. In addition, the Access identification card will allow claimant and Mother to ride the public bus and light rail system at no cost. As an SSI recipient, claimant is eligible

for the lower handicapped bus rate. However, the Service Agency contends that Access is more cost-effective than a monthly bus pass.

10. The Service Agency also contends that Welfare and Institutions Code section 4648.35 supports the decision to deny Mother's funding request for a bus pass. Section 4648.35 provides that a regional center may purchase transportation services for a minor child living in the family home only if the family provides sufficient written documentation to demonstrate that it is unable to provide transportation for the child. The Service Agency has not received any written documentation from claimant's family showing that the family is unable to fund for Access services or for a low-cost handicapped bus pass. Further, the Service Agency notes that claimant receives a monthly SSI benefit of \$444 and in-home supportive services (IHSS) of 36.4 hours per month, with Mother serving as claimant's IHSS provider, and that these financial resources could be applied towards the cost of claimant's transportation.

11. Mother chose not to testify at the hearing, despite being given the opportunity and encouragement to do so. The documentary evidence and the testimony of the Service Agency's witnesses, however, established Mother has previously expressed to the Service Agency her concerns about using Access for claimant's transportation. Mother is uncomfortable about showing a handicap Access card on the bus because she fears the bus driver may question her daughter's disabled status publicly. She does not want her daughter to feel singled-out and embarrassed because of her disability. Mother uses the monthly bus pass to accompany claimant to medical and dental appointments and school field trips. Mother has also expressed to the Service Agency that it would be a financial hardship if the family had to pay for a bus pass. The family has only one car, which claimant's father uses to travel to his job. There is an entry by Ms. Otero in the Consumer Transactions notes (Exhibit 9) for March 24, 2010, indicating that Mother informed Ms. Otero that claimant's father was being hospitalized after suffering severe burns due to a work related explosion, and that it took Mother three hours by bus to get to the hospital to visit her husband. There was no other evidence presented regarding the father's injuries.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)²

2. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a)(1).) "The determination of which services and supports are necessary for each

² All further statutory references are to the Welfare and Institutions Code.

consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by the individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost effectiveness of each option." (§ 4512, subd. (b).)

3. A regional center is required to identify and pursue all possible sources of funding for consumers receiving regional center services, including but not limited to governmental or other entities or programs required to provide or pay the cost of providing services, such as Medi-Cal, Medicare, school districts, federal supplemental security income, and state supplementary program. (§ 4659, subd. (a).)

4. A regional center is required to use generic services and supports when appropriate. "Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§ 4648, subd. (a)(8); see also, § 4646, subd. (d).)

5. The services and supports that may be listed in a consumer's IPP include, but are not limited to, "transportation services necessary to ensure delivery of services to persons with developmental disabilities." (§ 4512, subd. (b).)

6. In July 2009, the Legislature enacted section 4648.35, which governs a regional center's purchase of transportation services. Subdivision (d) of the statute provides: "A regional center shall fund transportation services for a minor child living in the family residence, *only if* the family of the child provides sufficient written documentation to the regional center to demonstrate that it is unable to provide transportation for the child." (Emphasis added.)

7. In this case, the Service Agency may terminate funding for claimant's monthly bus pass. The bus pass is a transportation service to which section 4648.35, subdivision (d), applies. The Service Agency may not fund a monthly bus pass as a transportation service because claimant's family has not provided the Service Agency with the written documentation required under subdivision (d). Further, the Service Agency may terminate funding for the bus pass on the grounds that a generic resource (i.e., Access) is available to meet claimant's transportation needs at low or no cost. No evidence was presented that claimant's transportation needs, as identified in her IPP, could not be met through Access services. Mother's concern about claimant being publicly singled-out due to her disability is speculative and does not establish that Access could not meet her daughter's transportation needs. Although the preferences of a consumer and her family are one factor to be considered in determining services, it is not the only factor. Mother's preference not to use Access services or transportation from the school district cannot override the Service

Agency's obligation to comply with the Lanterman Act in providing claimant's transportation services. Claimant's appeal must be denied.

ORDER

Claimant's appeal is denied. The Service Agency may terminate funding for claimant's monthly bus pass.

DATED: June 14, 2011

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.